SBCivil Writ Petition No.165/1996
(Mangilal v. State & Ors.)

Date of Order :: 10th April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.S.Sandhu, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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A challenge is given by the petitioner to the judgment dated 2.12.1995 passed by learned Additional Collector (Administration), Sriganganagar in Revision Petition No.48/89 preferred by Shri Prithviraj (respondent No.5) under Rule 272 of the Rajasthan Panchayat (General) Rules, 1961 (hereinafter referred to as “the Rules of 1961”).

The facts required to be noticed for adjudication of present writ petition are that the petitioner purchased a plot in auction from Gram Panchayat 58 NP Shyamgarh. Accordingly a patta was issued in his favour on 1.11.1981. One Shri Ranjeet being aggrieved by allotment of land to the petitioner preferred an appeal before the Panchayat Samiti, Raisinghnagar which came to be accepted by an order dated 1.7.1982. The Panchayat Samiti remanded the matter to Gram Panchayat to consider the issue with regard to allotment of land to the petitioner afresh. The Gram Panchayat by its order dated 5.4.1988 held that the land in question is not required to be sold being necessary to be kept open.

Being aggrieved by the order dated 5.4.1988 passed by Gram Panchayat the petitioner preferred an appeal before the Panchayat Samiti, Raisinghnagar which came to be accepted by an order dated 28.8.1989. The Panchayat Samiti while accepting the appeal preferred by the petitioner held that the land in question be allotted to the petitioner and his possession thereon be kept intact if he leaves 10 feet land open close to the water tank.

Challenging the order dated 28.8.1989 respondent No.5 Shri Prithviraj preferred a revision petition under Rule 272 of the Rules of 1961. The revision petitioner by an application dated 20.11.1995 sought permission to withdraw the revision petition. The Additional Collector while giving reference of the application preferred by Shri Prithviraj entered into merits of the case and quashed the order dated 28.8.1989 passed by the Panchayat Samiti, Raisinghnagar. The Additional Collector while accepting the revision petition held that allotment of land to the petitioner will cause hindrance in regular use of water tank situated close to the land in dispute, therefore, the same shall not be in public interest.

While giving challenge to the judgment dated 2.12.1995 passed by learned Additional Collector it is contended by counsel for the petitioner that the

Additional Collector committed an error apparent on the face of record while accepting the revision petition though the same was sought to be withdrawn by the revision petitioner.

I do not find any force in the contention so raised as the Additional Collector under Rule 272 of the Rules of 1961 is competent enough to examine the validity and propriety of an order passed by Panchayat Samiti suo motu. In view of it the examination of the order dated 28.8.1989 passed by the Panchayat Samiti by the Additional Collector in spite of the application dated 20.11.1995 is not at all wrong. The Additional Collector while deciding the revision petition on merits has not travelled beyond the jurisdiction vested with him merely on the count that the revision petition was sought to be withdrawn by the revision petitioner.

Counsel for the petitioner has further contended that the Panchayat Samiti, Raisinghnagar while accepting the appeal preferred by the petitioner has taken into consideration all aspects relating to the situation and location of water tank and its use by villagers. The Panchayat Samiti by taking into consideration the objective conditions instructed the petitioner to leave 10 feet space from the water tank, that so the villagers may use it effectively. The petitioner before the Panchayat Samiti accepted for it.

I have examined the order dated 28.8.1989 wherefrom it is apparent that the Panchayat Samiti after considering all aspects of the matter reached at the conclusion that the allotment of land in dispute will not cause any hindrance in use of water tank if 10 feet of land is kept open adjacent to the water tank. It is also held by the Panchayat Samiti that the allotment of land will also not effect beauty of the site. The Additional Collector while accepting the revision petition has over looked the considerations and finding given by the Panchayat Samiti. The villagers who were initially having grievance on allotment of land to the petitioner were also satisfied with the decision given by the Panchayat Samiti.

I do not find any sufficient reason for the revisional authority to interfere with the order making allotment of land in favour of the petitioner. The revisional authority in fact without taking into consideration the discussion and the material available with the appellate authority accepted the revision petition and set aside the order dated 28.8.1989. The revisional authority was required to examine validity and propriety of the proceedings making allotment of land in favour of the petitioner but the authority in fact failed to do it as no material available on record was taken into

consideration. The order impugned, therefore, suffers from an error apparent on face of record which requires rectification by this Court in its extra ordinary jurisdiction.

Accordingly, this petition for writ is allowed. The judgment dated 2.12.1995 passed by Additional Collector (Administration), Sriganganagar in revision petition No.48/89 is quashed. The order dated 28.8.1989 passed by the Panchayat Samiti, Raisinghnagar is restored.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.